REVIEW has reached in the past is due to those who have contributed articles, and it is to those who have so generously promised to contribute in the future that we owe our chief encouragement for the coming year.

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THE LAW SCHOOL.—The enrollment in the Law School is larger this year than ever before in its history, there being three hundred and two registered students at the date of going to press. The following table indicates the enrollment by states and countries:

| | | | |
|---|---|---|---|
| Alabama | 3 | Montana | 5 |
| Arkansas | 5 | New Jersey | 4 |
| Connecticut | 3 | New York | 3 |
| California | 1 | North Carolina | 5 |
| Delaware | 6 | Ohio | 4 |
| District of Columbia | 5 | Oklahoma | 1 |
| Florida | 4 | Pennsylvania | 6 |
| Georgia | 10 | South Carolina | 8 |
| Idaho | 1 | Tennessee | 9 |
| Kentucky | 12 | Texas | 4 |
| Maryland | 8 | Virginia | 174 |
| Massachusetts | 1 | Washington | 4 |
| Michigan | 1 | West Virginia | 11 |
| Minnesota | 2 | Porto Rico | 1 |
| Mississippi | 1 | | |
| | | Total | 302 |

The opening of the session marks several changes within the Department. Professor Dobie has been granted another year's leave of absence and Acting Adjunct Professor F. D. G. Ribble, Jr., has charge of his work. Acting Adjunct Professor Julius Goebel, Jr., who substituted for Professor Dobie last year, did not return. The subject of Taxation has been temporarily dropped from the curriculum.

The faculty of the Law School have definitely announced that beginning with September, 1922 the requirements for admission to the department will include, in addition to the standard high school course, at least two years of college work.

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WIFE'S RIGHT TO SUE TO PROTECT HER INCHOATE RIGHT OF DOWER.—It is a fundamental principle of law that for the widow to be entitled to dower the husband must have been seised during coverture of an estate of inheritance.[1] And it necessarily follows that a conveyance by the husband before the marriage will bar

[1] Safford *v.* Safford, 7 Paige (N. Y.) 259, 32 Am. Dec. 633; Wilmarth *v.* Bridges, 113 Mass. 407.

the wife's dower.[2] But this general rule will not be allowed to defeat the wife's dower right when the prospective husband conveys property without valuable consideration prior to the marriage, intending to defraud the wife of her dower,[3] and the wife can sue to protect her dower right, though it is merely contingent, during the lifetime of her husband.[4]

In this connection, the crucial question is what constitutes fraud on the intended wife's dower right. It is clear that an "actual" and intended fraud on dower will be nullified by the courts.[5] This is even true where the grantor has no particular woman in mind but his intent is merely to defraud whomsoever he may marry.[6] But it will be noticed that in these cases there is an actual intent to defraud.

However, the trend of modern decisions undoubtedly is, that any conveyance by one about to marry, not known and assented to by the prospective wife, will be a "constructive" fraud upon her dower right, and will be set aside by the courts in order to protect her inchoate right of dower.[7] This "constructive" fraud, it will be seen from a careful perusal of the cases, can exist only where there has been a conveyance after the betrothal of the grantor to his intended wife.[8] Hence, no fraud can be predicated by reason of a conveyance by the husband unless he is actually engaged to be married or unless an actual intent to defraud can be shown.[9]

The recent case of *Melenky* v. *Melen* [10] flies squarely in the teeth of the decided cases on this point. In that case, a father conveyed his property in fee to his son, the defendant, to hold and manage during a contemplated trip by the father, upon an agreement by the son to reconvey to him upon demand. The

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[2] Nelson *v.* Brown, 164 Ala. 397, 137 Am. St. Rep. 61, 51 So. 360; Collins *v.* Smith, 144 Iowa 200, 122 N. W. 839.

[3] Kelley *v.* McGrath, 70 Ala. 75, 45 Am. Rep. 75; Roberts *v.* Roberts, 131 Ark. 90, 198 S. W. 697; Leach *v.* Duval, 8 Bush. (Ky.) 201.

[4] Petty *v.* Petty, 4 B. Mon. (Ky.) 215, 39 Am. Dec. 501; Clifford *v.* Kampfe, 147 N. Y. 383, 42 N. E. 1.

[5] Cases in note 3, *supra.*

[6] Higgins *v.* Higgins, 219 Ill. 146, 76 N. E. 86, 109 Am. St. Rep. 316. See Beechley *v.* Beechley, 134 Iowa 75, 108 N. W. 762, 120 Am. St. Rep. 412, 13 Ann. Cas. 101, 9 L. R. A. (N. S.) 955.

[7] Wallace *v.* Wallace, 137 Iowa 169, 114 N. W. 913; Ward *v.* Ward, 63 Ohio St. 125, 57 N. E. 1095, 81 Am. St. Rep. 621, 51 L. R. A. 858.

[8] Butler *v.* Butler, 21 Kan. 521, 30 Am. Rep. 441; *In Re* Coleman's Estate, 193 Pa. 605, 44 Atl. 1085.

[9] The case of Higgins *v.* Higgins, *supra,* is often cited as authority for the *contra* of this proposition. But upon a careful study of the case it will be found that an actual intent to defraud was shown to exist. Cartwright, C. J., said: "* * * if the intention was to defraud of her marital rights any person whom he should marry, it makes no difference that he had not yet selected the complainant as his spouse. *There must be a fraudulent intent,* but it need not necessarily be directed against a particular person." (Italics ours.) This case is supported by Beechley *v.* Beechley, *supra,* which overrules in part Gainor *v.* Gainor, 26 Iowa 337.

[10] 189 N. Y. Supp. 798.

father took a trip to California and there met and married the plaintiff, he having told her that he owned real property in New York. Upon their return to New York the defendant refused to reconvey the property to his father but finally agreed to give him a life estate in the land, which the father accepted. The plaintiff instituted suit to establish her inchoate right of dower in the property. The court held that plaintiff should recover, as the defendant's refusal to reconvey to his father operated as a fraud upon her inchoate right of dower.

The court recognized that this was a case of first impression and decided the questions involved upon "equitable" grounds. But clearly there was no intent to defraud on the part of the grantor, and there is also no ground on which to set up "constructive" fraud. The conveyance was made sometime before betrothal and before any marriage whatever was contemplated by the husband, and it has been seen that "constructive" fraud can only be raised by a conveyance after the engagement of the parties to be married.

Furthermore, the cases relied upon by the court do not sustain its conclusion. In *Youngs* v. *Carter*,[11] which appears to have been strongly relied upon by the court, the conveyance was made after the parties had become engaged to be married, and hence it was a clear case of "constructive" fraud on the part of the husband. Again, there is no actual fraud on the part of the grantor in *Melenky* v. *Melen*, but on the part of the grantee, if at all. Hence, the cases are clearly distinguishable.

The other two cases cited in the opinion, *Bowery National Bank* v. *Duncan*, [12] and *Lugar* v. *Lugar*, [13] were concerned with dower in lands in which the husband had an equitable title, and which title was acquired subsequent to the marriage of the parties, and hence do not seem to be applicable to the exact point at issue except so far as they show that the wife can have dower in the husband's equitable estate.

The only theory upon which the decision could be based would be that the husband had an equitable title to the land and hence seised according to the modern statutory doctrine. And this would seem to be the sound reason upon which to base the decision of the court in this case. It is clear from the facts that the defendant had only the bare legal title to the property and that the equitable title was in the father, the husband of the plaintiff. Then, since by statute the wife is dowable out of the equitable estate of her husband, it seems only equitable and sound that here she should have the right to sue to establish her inchoate right of dower in the land of which her husband was the equitable owner during coverture.[14]

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[11] 10 Hun. (N. Y.) 194.
[12] 12 Hun. (N. Y.) 405.
[13] 160 App. Div. 807, 146 N. Y. Supp. 37.
[14] See concurring opinion of Kreuse, P. J., in Melenky *v.* Melen, *supra;* Bowery National Bank *v.* Duncan, 12 Hun. (N. Y.) 406; Lugar *v.* Lugar, 160 App. Div. 807, 146 N. Y. Supp. 37.

The true situation as to the question of fraud seems to be given in the dissenting opinion of Clark, J., which we give in part:[15]

> "I cannot see how any fraud could have been perpetrated on the plaintiff by the old gentleman's deeding the property in question to his son before plaintiff's marriage to the father was ever thought of. If the plaintiff and her present husband had been engaged to be married at the time of the conveyance, the case of *Youngs* v. *Carter*, 10 Hun. 194, would be in point.
>
> "I cannot see where that case is any authority for plaintiff here, for the facts are not similar. There the plaintiff and the grantor were actually engaged to be married when the deed was made. Here there was no such relationship, and so far as I can discover in the record, when the deed of the Front Street property was made to the son, Reuben Melenky did not even know plaintiff, to say nothing about being engaged to marry her. * * *
>
> "Under the facts as set forth in the complaint, and conceded by the demurrer, I cannot see, where at the time the deed in question was made, plaintiff had any 'rights' which could in any way be affected by the conveyance. She was a stranger to the transaction, and at that time was evidently a stranger to all the parties."

The view expressed in this dissenting opinion seems to be the sound one. Although there is no case directly in point, all the authorities assert that "actual" fraud will always vitiate an antenuptial voluntary conveyance when it deprives the wife of her dower right, but that "constructive" fraud will only be predicated upon the conveyance by the husband of his real property after he has become engaged to marry his intended wife. If the rule were otherwise, there would be no limit on the restriction of a man's conveying land before his marriage, and it would surely make for injustice and uncertainty.

F. W. D.

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ADMIRALTY JURISDICTION OVER CONTRACTS TO RECONSTRUCT VESSEL FOR NEW FUNCTION.—As a general rule, contracts are subject to admiralty jurisdiction and are considered maritime when they relate to a ship as an instrument of commerce or navigation, intended to be so used, or when they facilitate its use as such. Thus, it was considered by the Court in *Wortman* v. *Griffith*,[1] which was a suit by the owner of a ship yard for the use of his marine ways by the vessel, that the nature of the contract or service, and not the question of whether the contract was made

[15] 189 N. Y. Supp. 803.
[1] 30 Fed. Cas. 649.